

Choice One,⁴⁸ Verizon NY did *not* agree to waive recovery of the ongoing costs of providing CLECs with access to OSS or of certain OSS costs for line sharing – charges that have already been approved by the Commission. In agreeing to waive recovery of OSS development costs and DSL-related costs, Verizon NY potentially gave up millions of dollars and provided CLECs with much-needed certainty regarding their wholesale charges. In return, Verizon NY also received much-needed certainty, as the Joint Proposal extinguished various potential claims against Verizon NY, including, among other things, the issues surrounding exogenous cost recovery offset by any earlier merger savings. However, it is clear that Verizon NY did not waive its rights to collect already approved rates.

B. VERIZON NY'S AGREEMENT TO PARTICIPATE ON TASK FORCES SHOULD NOT BE TRANSFORMED INTO A MANDATE FOR NEW REGULATION

Choice One also has sought to impose additional obligations on Verizon NY by transforming Verizon NY's agreement to participate in task forces to promote cooperation and achieve best practices into a requirement that these working groups achieve specific goals by specific deadlines. Under the Joint Proposal, Verizon NY agreed to cooperate in (1) a New Products and Services Task Force to address issues including billing and collection, building access, and provisioning of services where no facilities are available; and (2) a Bottleneck Elimination Task Force in which Verizon NY will work with CLECs and Staff to solve facilities, hot cuts, and other bottleneck problems.⁴⁹ Choice One requests that the Commission order both task forces to provide

⁴⁸ Pre-filed Direct Testimony of David A. Fitts on Behalf of Choice One Communications of New York Inc. Regarding the Joint Settlement Proposal in These Proceedings, dated February 15, 2002 ("Choice One Testimony"), at 13.

⁴⁹ See Joint Proposal at 3-4.

specific recommendations within six months, with the Commission taking action within a short time thereafter.⁵⁰ Choice One also asks the Commission to impose an ambiguous mandate that requires “the timely introduction of new hot cut procedures and methods, some of which have been very successful in other jurisdictions, and are cost effective for both CLECs and the ILEC.”⁵¹

These requirements would be inconsistent with the terms agreed upon in negotiating the Joint Proposal and in any event would be inappropriate. The task forces are designed to develop industry-wide solutions to rapidly changing problems in a dynamic marketplace. The goal is to find “best practices” that will aid the industry players in the transition to an even smoother functioning competitive marketplace. These problem-solving groups should not be transformed into special committees that are required to develop additional layers of regulation.⁵² Nor should efforts be made to micromanage a process that has not yet even begun. There is no reason to approach the work of the task forces with a presumption that they will be ineffective without strict guidelines and Commission intervention; such an approach undermines the spirit and goals of the task force concept.

Likewise, Choice One’s request that the Commission impose a nebulous obligation on Verizon NY to introduce unspecified new hot cut procedures and methods should be rejected. The Bottleneck Elimination Task Force will work to develop

⁵⁰ Choice One Testimony at 10-11.

⁵¹ *Id.* at 8.

⁵² Choice One similarly seeks to impose deadlines and specific obligations on Verizon NY’s Intrastate Special Services Process Improvement Program. *See id.* at 12. The Special Services Program is an *internal* program, so it is simply inappropriate to impose mandates in that context.

practices and resolve problems related to various issues, including hot cuts. Adopting an ambiguous, open-ended mandate simply would not be helpful and, indeed, likely would engender additional disputes over the scope of such a requirement.

C. THE JOINT PROPOSAL APPROPRIATELY ADDRESSES POSSIBLE REFUNDS ARISING FROM TEMPORARY SWITCHING RATES

Choice One contends that the Joint Proposal's provisions for possible refunds arising from the replacement of temporary switching rates with permanent rates should be clarified and or modified.⁵³ Among other things, the Joint Proposal obligates Verizon NY to provide \$15 million for a "Forward Fund" to satisfy possible refunds for carriers that paid temporary rates for switching and obtained no more than 5,000 hot cuts in 2001.⁵⁴ Choice One claims that there is no basis for limiting eligibility to carriers with no more than 5,000 hot cuts in 2001. But this provision of the Joint Proposal, like all the provisions, is the product of substantial compromises among the various parties. Carriers offering primarily platform services will benefit from Verizon NY's agreement to set up a Forward Fund; carriers performing numerous hot cuts will benefit from the reduced charges for hot cuts in the Joint Proposal. It is always possible to second-guess efforts at line drawing, and Choice One's suggestion that the line might have been drawn differently clearly was an option rejected in the course of the negotiations. The provision reflected in the Joint Proposal is a balanced compromise and should not be revised.

⁵³ See Joint Proposal at 2-3; Choice One Testimony at 13-14.

⁵⁴ Joint Proposal at 2-3.

**D. THE COMMISSION SHOULD NOT RESPOND TO UNSUPPORTED
ASSERTIONS REGARDING THE LIFELINE PROGRAM**

The New York Lifeline Program is one of the most far-reaching and successful programs of its kind in the nation, offering automatic enrollment for eligible residents. As part of the Joint Proposal, Verizon NY has agreed to reduce the connection fee for Lifeline to \$5.00 and has agreed to freeze the recurring charges for the program. Nevertheless, the Public Utilities Law Project ("PULP") alleges that the Commission must take action because of a steep decline in Lifeline enrollment.⁵⁵ PULP notes that enrollment in Lifeline has declined from a high of 720,000 in December 1996 to 452,000 in December 2001.⁵⁶ To respond to this decline, PULP urges that three programs should be added to the list of programs that establish eligibility for the Lifeline program.⁵⁷

However, PULP provides no evidence that low-income families that need assistance are not receiving telephone service. As PULP admits in its testimony, as of 2000, 92% of New Yorkers with annual household incomes less than \$16,676 had telephone service, compared with 87.5% of this population nationwide.⁵⁸ Similarly, the percentage of New Yorkers with incomes less than \$33,352 who had telephone service

⁵⁵ See Public Utility Law Project Comments on the Joint Proposal Concerning Verizon Incentive Plan, dated February 14, 2002 ("PULP Comments"), at 2-3; Testimony of Dr. Trudi J. Renwick, Ph. D. for the Public Utility Law Project, dated February 14, 2002 ("PULP Testimony"), at 5.

⁵⁶ PULP Testimony at 5. The enrollment numbers for 1996 and 2001 are actually 727,891 and 453,516, respectively. In addition, it is unclear whether this downward trend is continuing. In November and December 2001, Lifeline customers grew by 11,000.

⁵⁷ In particular, PULP recommends that residents who qualify for the National Free/Reduced Lunch program, the State Earned Income Tax Credit program, and the Child Health Plus program should be eligible for the Lifeline program. See PULP Comments at 3; PULP Testimony at 9-13.

⁵⁸ PULP Testimony at 4.

was 96.9% compared to 93.3% nationwide.⁵⁹ While PULP speculates that eligibility changes in the assistance programs that qualify residents for Lifeline have reduced enrollment in New York, PULP offers no proof of this assertion. Numerous factors, including rising incomes and the dramatic successes achieved in New York's welfare-to-workfare programs, likely have affected enrollment. Indeed, PULP acknowledges that the number of New York families with incomes below the official poverty line has decreased from 650,000 in 1998 to 504,000 in 2000.⁶⁰

PULP's suggestion that New York is somehow missing out on a pot of "free" federal money is simply misplaced. There are two sources of funding for Lifeline: the federal Universal Service Fund ("USF") and the Targeted Accessibility Fund ("TAF") of New York. The federal USF is funded by all telecommunications carriers providing interstate and international communications services. They are predominantly the Interexchange Carriers ("IXCs") or Long Distance providers, wireless carriers and LECs, like Verizon NY. While it is true that a decline in enrollment will reduce federal funds to offset Lifeline discounts in New York, these funds are not generated from general taxes but from ratepayers, across the country (including those in New York). The TAF is funded through an assessment against all telecommunications providers in New York State. If the eligibility criteria for Lifeline changed to increase enrollment, that change will result in increased assessments on all carriers in New York. Verizon NY has no

⁵⁹ *Id.*

⁶⁰ *See id.* at 9. It bears mention that competitors serve approximately 2 million residential lines today and this, too, of necessity, leads to Verizon NY providing less Lifeline service.

mechanism in place to recover those increased TAF costs. This would have a negative financial impact on Verizon NY.

More specifically, if the number of Lifeline customers were to increase by 250,000, Verizon NY would receive approximately \$23 million from the USF. However, this \$23 million would come from surcharges applied by IXC's, wireless telephone providers and LECs to consumers nationwide, including New York. For example, AT&T's universal service fund charge is 11.5% of total billed interstate and international charges. Moreover, PULP's assertion that an increase in Lifeline customers would have no financial impact on Verizon NY is also incorrect. Verizon NY contributes significantly more to the TAF than it receives back; an increase in Lifeline customers would increase Verizon NY's TAF obligations.⁶¹

In the absence of *evidence* that there is a need for changes in the eligibility for the Lifeline program, the Commission should not take any action at this time in connection with its consideration of the Joint Proposal.⁶² The Verizon NY Lifeline program remains a model nationwide. Indeed 8% of Verizon NY customers receive Lifeline service. This premier program should not be touched.

E. THE COMMISSION SHOULD REJECT CABLEVISION LIGHTPATH'S ATTEMPT TO EVADE ITS STATUTORY OBLIGATION TO NEGOTIATE INTERCONNECTION AGREEMENTS

Cablevision Lightpath seeks to add a wholly unrelated proposal that is inconsistent with the Telecommunications Act of 1996 (the "1996 Act"). Cablevision Lightpath seeks to include a provision that would allow a CLEC to request a three-year

⁶¹ Verizon currently contributes approximately 70% of all TAF funds while receiving only approximately 60%.

extension of any existing interconnection agreement. According to Cablevision Lightpath, the Commission would presume that such a request is in the public interest, and Verizon NY could overcome that presumption only by showing that, because of an intervening change in the law, renewal of a specific term would not be in the public interest.

This proposal bears on no existing provision of the Joint Proposal and is thus wholly extraneous. But even more critically, Cablevision Lightpath's suggested provision would interfere with the carefully balanced rights of the parties as set forth in the 1996 Act and could actually curtail the incentive for CLECs to negotiate interconnection agreements – something that the 1996 Act specifically sought to encourage. Section 251(c)(1) specifically imposes upon ILECs – and CLECs – the obligation to negotiate interconnection agreements in good faith. The 1996 Act also established procedures for mediating and arbitrating issues arising during such negotiations.⁶³ Cablevision Lightpath's drastic proposal would alter the burden of proof and introduce new standards for reviewing interconnection agreements – both of which would almost certainly contravene the 1996 Act. Remarkably, Cablevision Lightpath has offered no evidence, anecdotal or otherwise, to support its claim for such a far-reaching change. Moreover, the 1996 Act already permits CLECs to avoid costs and negotiate efficiently by permitting them to adopt terms of existing interconnection agreements (or

(. . .continued)

⁶² See Attachment A, letter dated Feb. 21, 2002, from Sandra Dilorio Thorn to Hon. Maureen Helmer.

⁶³ See 47 U.S.C. §§ 252(a)(2) and b(1).

entire agreements).⁶⁴ In short, this proposal is entirely beyond the scope of the Joint Proposal, is inconsistent with the 1996 Act, and should therefore be rejected.

F. THERE IS NO NEED TO IMPOSE ADDITIONAL OBLIGATIONS ON VERIZON NY TO KEEP CLECs INFORMED OF NEW TECHNOLOGY AND NEW SERVICES

Choice One asserts that there is a “public interest need for CLECs to be informed of Verizon NY’s introduction of technology that may affect network design and UNE availability.”⁶⁵ However, there is no need to burden the Joint Proposal and Verizon NY with additional obligations. The CLECs will be informed of network design issues by the Commission and industry forums and company releases discussing the development and deployment of new services and technology. *See, e.g.,* www.bellatlantic.com/disclose/netdis.htm

In addition, Choice One argues that if new technology or new services are introduced, Verizon NY must agree to offer them simultaneously to wholesale customers “at Commission-set rates via resale, under the UNE platform, and/or via the respective underlying UNE elements.”⁶⁶ As all parties to this proceeding are well aware, there are a variety of federal statutory provisions, FCC rules, and Commission decisions that may impact whether or not new services must be made available, and it would be inappropriate to try to determine in advance whether new services or new technology must be made available for resale or as an unbundled network element.

⁶⁴ *See* 47 U.S.C. § 252(i).

⁶⁵ Choice One Testimony at 12.

⁶⁶ Choice One Testimony at 12-13.

G. THE COMMISSION SHOULD NOT MODIFY THE JOINT PROPOSAL TO ADDRESS A GENERAL CONCERN ABOUT THE ABSENCE OF A DIFFUSION FUND REQUIREMENT

At the hearing, Assemblyman Brodsky's office expressed a general concern that the Joint Proposal does not include a Diffusion Fund requirement of the type that was included in the PRP. That office made no specific recommendations concerning how, if at all, the proposed Plan should be modified to address that concern. However, the Commission should not take it upon itself to modify the Joint Proposal to meet that concern, particularly since a diffusion fund type of program is not necessary and would unduly impose additional obligations on Verizon NY.

As a threshold matter, the perceived need for a diffusion fund should not be addressed in this proceeding, let alone at this late stage in the proceeding. Diffusion fund programs raise universal service issues that are more appropriately addressed in a forum that involves the entire LEC community, particularly since each member of that community ought to share in the responsibility for ensuring that advanced technology is available to all. Considering such a program in this proceeding is inappropriate since it focuses on Verizon NY and takes no account of other carrier's responsibilities in this area.⁶⁷

Indeed, a diffusion fund program is neither necessary nor appropriate given the ever-increasing competition in the state today. At the time the Diffusion Fund in the PRP was adopted, there were far fewer competitors in the New York local exchange markets

⁶⁷ Moreover, as previously discussed (*supra* note 3), parties have had ample opportunity to express their concerns and interests and to propose programs they believe should be included in an alternative regulation plan for Verizon NY. Considering a diffusion fund type of program at the eleventh hour and, worse, adopting such a fund at this late stage of a proceeding that began nearly one and one-half years ago would be completely inappropriate.

than there are today. While Verizon NY agreed to shoulder much of the burden of ensuring that low income areas of the state receive the benefits of advanced technology through the Diffusion Fund, it should not be required (or even expected) to carry this burden today. This is particularly so given that Verizon NY's competitors will not be subject to this same requirement themselves. This would disrupt competition not merely because it would impose an obligation disproportionately on a single competitor but also because the availability of money from a diffusion fund might effectively preclude other competitors from making competing proposals.

Moreover, the 1996 Act has eliminated any need for a diffusion fund type of program. Section 254(h)(1)(B) of the 1996 Act relates to "Educational Providers and Libraries." Under this section, long distance carriers such as Verizon NY collect from their customers a surcharge that the carriers then pay into a federally administered fund for distribution to eligible schools and libraries. This program provides a competitively neutral means of ensuring that schools and libraries receive discounted access to technologically advanced telecommunication services and products. The school's or library's discount is determined by the percentage of students in the district in which the school or library is located that participates in the school lunch program. Schools and libraries can obtain discounts of up to 90% on, among other things, telecommunication services, internet access and internal wiring. In each of the four years in which this fund has been in place, schools and libraries in all parts of New York state have obtained hundreds of millions of dollars in discounts. This more than addresses the need that the diffusion fund in the PRP was intended to address and there is no need to replicate the diffusion fund in the proposed Plan.

Finally, modifying the proposed Plan to include a diffusion fund requirement would, like all the other recommended modifications, needlessly upset the balance struck in the Joint Proposal. Beyond that, it would impinge on Verizon NY's ability to invest in the state by siphoning off capital from programs that will be needed, among other things, to maintain high quality service. The Commission should avoid this result by avoiding calls for a diffusion fund-type program.

IV. CERTAIN PROVISIONS OF THE JOINT PROPOSAL HAVE BEEN CLARIFIED

At the hearing, certain provisions of the Joint Proposal were clarified. In addition, in response to comments by other participants in the negotiations, Verizon NY will clarify its understanding of other provisions of the Joint Proposal. In particular:

- Current rates will remain in effect until the Joint Proposal takes effect on March 1, 2002.
- The Performance Assurance Plan remains in effect according to its terms.
- The \$35.00 charge for hot cuts (*i.e.*, the \$185.00 charge reduced by appropriate credits that yield a \$35.00 charge) includes service order, central office wiring, and provisioning.
- Under the Joint Proposal, the rates for "Carrier Access Services" may not increase. While Choice One is correct that the term "Carrier Access Services" is not defined in the Joint Proposal, it is defined in PSC Tariff No. 11; Carrier Access Services are limited to Switched Access Services.
- Under the Service Quality Plan, credits will be paid to wholesale customers providing local service via resale or UNE-P and will be credited directly to the appropriate CLEC's account. Although the proposed Plan sets a limit of \$50 per

customer account, per occurrence for credits payable on missed Performance

Objectives, the per customer account limit does not apply to CLECs who will be paid on a per occurrence basis.

- Under the UNE Availability section of the Joint Proposal (§ III(B)), Verizon NY will provide the UNE-P to a requesting CLEC to serve a business customer with 18 or fewer lines in any part of Verizon NY's service territory. Verizon NY will provide the UNE-P to a requesting CLEC to serve a business customer with 19 or more lines, only if that business customer *is not* located in one of the 30 central offices listed in Appendix B of PSC Tariff No. 10. If a CLEC requests to serve a business customer with 19 more lines who *is* located in one of the 30 central offices listed in Appendix B of PSC Tariff No. 10, Verizon NY will provide the UNE-P, but reserves the right to offer the service at higher than TELRIC rates.

V. CONCLUSION

Almost all parties at the hearing advocated approval of the Joint Proposal without modification. The Joint Proposal will serve the public interest by stimulating competition and creating market-based incentives for Verizon NY to continue to improve service quality, offer rates that respond to customer demand, and continue to invest in the New York telecommunications market. At the same time, the Joint Proposal contains provisions designed to prevent service quality backsliding and limit retail rate increases

to a reasonable level. For all these reasons, and as set forth in further detail above, the Joint Proposal should be approved in its entirety, without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra DiIorio Thorn". The signature is fluid and cursive, with the first name "Sandra" being more prominent.

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Dated: February 21, 2002

ATTACHMENT A

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Sandra Dilorio Thorn
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February 21, 2002

BY HAND

Honorable Maureen O. Helmer
Chairman
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 00-C-1945

Dear Chairman Helmer:

I am writing to respond to your questions at the Commission hearing on Tuesday, February 19, 2002 regarding the Lifeline program.

At the hearing (and in pre-filed comments and written testimony), the Public Utilities Law Project ("PULP") argued that the Commission should take action to reverse the decline in enrollment in the Lifeline program. PULP claimed that Lifeline enrollment should be increased, not by assuring those eligible for the program are enrolled, but by expanding the list of programs that would make New York residents eligible for Lifeline. That is, when a resident is eligible for one of those additional programs, he or she would automatically be eligible for Lifeline. PULP also suggested that an expansion in Lifeline enrollment could be paid for through an increase in federal funding, stating there would be no financial impact on Verizon New York Inc. ("Verizon") from such an expansion.

Verizon strongly disagrees that there is a need for the Commission to take action to expand Lifeline eligibility. Verizon's Lifeline program is one of the most far-reaching and successful programs of its kind in the nation, offering automatic enrollment for eligible residents. Furthermore, PULP is simply wrong when it claims there is a "free lunch" to fund any such expansion.

First, while PULP is correct that Lifeline enrollment has dropped from approximately 720,000 in December 1996 to 452,000 in December 2001, PULP has not demonstrated that low-income families that need telephone service are not receiving service.¹ Indeed, PULP's own testimony creates serious doubts about the need for Commission action. Currently, some 8% of Verizon customers receive Lifeline service. PULP notes that as of 2000, 92% of New Yorkers with annual household incomes less than \$16,676 had telephone service compared with 87.5% of this population nationwide. Similarly, the percentage of New Yorkers with incomes less than \$33,352 that had telephone service was 96.9% compared to 93.3% nationwide. Although PULP speculates that the decline in Lifeline enrollment is the result of changes in the underlying assistance programs that establish eligibility for Lifeline, PULP does not provide evidence to support this claim. In fact, the decline is likely the result of a variety of factors, including the improved financial status of New Yorkers and record low unemployment rates. Overall Lifeline enrollment has reflected national economic trends and state public assistance policy. Indeed, consistent with these trends, the number of Lifeline customers

¹ PULP specifically chose the largest number available. It does not acknowledge that the spike in 1996 was a direct result of the commencement of automatic enrollment. For the previous year, there were over 61,000 fewer Lifeline customers, while in the subsequent year there were over 74,000 fewer. See response to PUL-VZ-1 interrogatory. In addition, the enrollment numbers for 1996 and 2001 are actually 727,891 and 453,516 respectively.

grew by 11,000 in November and December 2001. Even according to PULP's testimony, the number of families with incomes below the official poverty line has decreased from 650,000 in 1998 to 504,000 in 2000. It is also important to note that Verizon served far fewer residential retail access lines in New York during December 2001 than it did in 1996. Over that period of time, competitors have accounted for approximately 2 million residential access lines.

Second, if Lifeline enrollment were increased, there would indeed be additional costs imposed on Verizon and on ratepayers generally. At the hearing, you asked whether PULP was correct that the state is losing approximately \$22 million in federal Lifeline support because of the erosion of Lifeline customers. It is true that adding 250,000 Lifeline customers would result in Verizon NY receiving about \$22 or \$23 million from the federal Universal Service Fund ("USF"). However, the USF is funded by surcharges on ratepayers' bills nationwide, including New York ratepayers. Currently, for instance, AT&T assesses an 11.5% surcharge to all its residential customers to fund Universal Service obligations. Any increases in USF payments would likely result in higher surcharges on residential customer bills.

You also asked whether increased Lifeline enrollment would have any financial impact on Verizon. The answer is yes. The Lifeline program is funded through a combination of USF and the Targeted Accessibility Fund ("TAF") of New York.² The TAF is funded through an assessment on all telecommunications providers in New York. Verizon currently contributes nearly 80% of all the funds in the TAF, and New York

² Currently, Verizon NY receives approximately \$41.8 million from the federal USF for Lifeline and approximately \$3.0 million from the New York TAF. In percentage terms, Verizon NY receives approximately 93.3% of its funding for Lifeline from the USF and 6.7% from the TAF.

telecommunications providers, and thus their customers, collectively contribute 100% of the TAF funds. An increase in Lifeline enrollment would further increase the TAF's requirements thereby increasing Verizon's assessment from TAF and the assessment of all telecommunications providers in the state. While Verizon does not know how other providers would recover these increased assessments, under the Joint Proposal, Verizon would be unable to increase rates to cover this increased cost. Therefore, an increase in the eligibility to Lifeline would certainly have a negative financial impact on Verizon.

In short, PULP simply has not demonstrated that there is a need for Commission action to increase Lifeline enrollment. In any event, the Commission cannot increase enrollment without imposing additional costs on Verizon and New York ratepayers. The Commission should not take any action at this time to increase the programs under which New Yorkers would be eligible to receive Lifeline service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra DiIorio Thorn". The signature is fluid and cursive, with the first name "Sandra" being more prominent.

Sandra DiIorio Thorn

cc: Active Parties (By E-mail and U.S. Mail)